TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1956

No. 262

GOODALL-SANFORD, INC., PETITIONER,

vs.

UNITED TEXTILE WORKERS OF AMERICA, A.F.L. LOCAL 1802, AND UNITED TEXTILE WORKERS OF AMERICA, A.F.L.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED JULY 19, 1956

CERTIORARI GRANTED OCTOBER 8, 1956

SUPREME COURT OF THE UNITED STATES

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INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DEC. 18, 1956

—2984-3

DOCKET ENTRIES

Date 1955	Filings—Proceedings
Mar. 15	Complaint filed by Sidney W. Wernick, 85 Exchange St.; Portland, Maine, atty for Pl.
Mar. 15	Temporary Restraining Order, Clifford J., and for hearing on prayer of the Pl. for a preliminary injunction on the 21st day of March, 1955, at 10.30 o'clock A. M., dated and issued at 12.10 o'clock in the afternoon, March 15, 1955, filed. ($2,500 check deposited).
Mar. 15	Summons issued.
Mar. 16	Summons ret. executed. Executed Mar. 15, 1955.
Mar. 16.	Appearance of Wm. B. Mahoney, 120 Exchange St., Portland, Maine, atty. for def. filed.
Mar. 16	Motion to Dissolve Temporary Restraining Order Under Rule 65b and Motion to Dismiss Under Rule 12b 6, and Rule 12b 7, filed by atty. for def. w/Cert. of Service.
Mar. 21	Motion to Add United Textile Workers of America, A. F. L., as a Party Plaintiff w/Cert. of Service filed.
Mar. 21	Motion to Amend Complaint w/Cert. of Service filed.
Mar. 21	Hearing had in Chambers on Mar. 21, 1955.
Mar. 22	Order on Motions, Clifford J., allowing motion to add party plaintiff, denying def.'s motion to dismiss filed under Rule 12 (b) (7), denying def.'s motion to dismiss filed under Rule

12 (b) (6), allowing pl.'s motion to amend complaint, granting oral motion to withdraw prayers 1 and 2 of the original complaint, and ordering hearing on def.'s Motion to Dissolve Temporary Restraining Order under Rule 65 (b) and hearing on Pl.'s prayer for Preliminary Injunction be postponed to 10.30 A. M., Mar. 23, 1955, filed.

Mar. 22 Motion to Dissolve Temporary Restraining Order w/Cert. of Service filed by atty. for Goodall-Sanford, Inc.-

Mar. 22 Motion to Dismiss Amended Complain w/Cert. of Service filed by atty. for Goodall-Sanford, Inc.

Mar. 23 Order Denying Motion to Dissolve Temporary Restraining Order, Clifford, J., filed.

Mar. 23 Order Denying Motion to Dismiss Amended Complaint, Clifford, J., filed.

Mar. 23 Motion to Extend Restraining Order w/Cert. of Service, filed.

Mar. 23 Decree Extending Temporary Restraining Order, Clifford J., to the expiration of ten days from the 25th day of Mar. 1955 or until the further order of this Court, whichever shall first occur; and continuing the security, filed.

Apr. 1 Decree of Preliminary Injunction, Clifford, J., filed, at 9.00 A. M.

Apr. 1 Attested copies of the Decree of Preliminary Injunction filed on Apr. 1, 1955, and attested copies of the Order denying Motion to Dismiss Amended Compiaint, and Order Denying Motion to Dissolve Restraining

Order filed on Mar. 23, 1955, mailed to the following: Sidney W. Wernick and William B. Mahoney.

Apr. 5 Def.'s Answer w/Cert. of Service filed.

Apr. 6 Copy of transcript of hearing on Mar. 23 and 24, 1955, filed.

Apr. 15 Motion for Summary Judgment Pursuant to Rule 56 w/Cert. of Service filed by Sidney W. Wernick.

Apr. 15 Motion to Amend Complaint w/Cert. of Service filed by Sidney W. Wernick.

Apr. 21 Motion to Dissolve Preliminary Injunction and to Dismiss the Complaint w/Affadavit of Service filed by Wm. B. Mahoney.

May 13 Pre-trial conference held at Portland.

May 13 Motion to Amend Complaint allowed (in margin), Clifford, J.

May 13 Pre-trial memorandum filed.

May 20 Decree, Clifford J., Dissolving Preliminary Injunction, filed.

May 30 Motion to Amend Complaint, as Amended w/Cert. of Service. Motion Granted, Clifford, J., (in margin), filed.

June 1 Motion to Dissolve Preliminary Injunction and to Dismiss the Complaint filed on Apr. 21, 1955, Denied by Clifford, J., on margin thereof on June 1, 1955.

June 1 Opinion and Order, Clifford, J., on Motion for Summary Judgment with regard to the matter of specific performance of the arbitration clauses of the collective bargaining agreement, granting the Motion as aforesaid, and directing counsel for the plaintiffs to

prepare a decree in conformity with the views expressed in this Opinion, filed.

June 1. Copies of the Opinion and Order of June 1, 1955, delivered in hand to counsel by the Law Clerk.

June 13 Decree, Clifford J., directing designation by the parties of a single arbitrator or if there is a failure to agree upon such single arbitrator, the Court will so appoint and that the parties will submit to such arbitrator the questions presented, filed.

June 13 Copies of the Decree of June 13, 1955, delivered in hand to counsel.

June 27 Notice of Appeal filed by Drummond and Drummond and William B. Mahoney, attys. for Goodall-Sanford, Inc.

June 27 Bond for Costs on Appeal in the penal sum of $250, filed.

June 27 Motion to Suspend Operation of Decree for Specific Performance Pending Appeal to Court of Appeals filed by attorneys for Goodall-Sanford, Inc. Motion granted. Operation of decree entered on June 13, 1955, pursuant to order and opinion entered on June 1, 1955, suspended pending appeal, without bond, Clifford, J., filed.

July 8 Points Upon Which the Defendant Intends to Rely on the Appeal, filed.

July 11 Cert. of Service of Points Upon Which the Defendant Intends to Rely on the Appeal filed.

July 13 Stipulation filed by Sidney W. Wetnick and Wm. B. Mahoney.

UNITED STATES OF AMERICA
DISTRICT OF MAINE } ss:

I, Morris Cox, Clerk of the United States District Court in and for the District of Maine, do hereby certify that the annexed and foregoing is a true and full copy of the original docket entries In the Matter of:

UNITED TEXTILE WORKERS OF AMERICA, A. F. L. LOCAL 1802	CIVIL NO.
vs.	4–40
GOODALL-SANFORD, INC.	

now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Portland, this 21st day of July, A. D. 1955.

(SEAL)

MORRIS COX,
Clerk.

STIPULATION

It is stipulated by the parties hereto as follows:

1. The complaint was amended by adding as a party plaintiff United Textile Workers of America, A. F. L.; and wherever the words "plaintiff" or "plaintiff labor organization" appear in the complaint, they are to be treated as referring to both parties plaintiff, unless the context indicates otherwise.

2. The complaint was otherwise amended from time to time and, as finally amended, read as follows:

COMPLAINT

The plaintiff complains against the defendant and says:

1. This is a civil action arising under the Labor Management Relations Act, 1947, June 23, 1947, c. 120, Title III, Section 301,—61 Stat. 156, Section 301,—29 U. S. C. A., Section 185, which is a law of the United States regulating commerce.

This Court has jurisdiction of the action by virtue of the provisions of Section 301 of Title III of the Labor Management Relations Act, 1947, 29 U. S. C. A., Section 185, the action being a suit for violation of contract between an employer and a labor organization representing employees in an industry affecting commerce.

2. Plaintiff, United Textile Workers of America, A. F. L., Local Union 1802, is an unincorporated association and now is, and at all times relevant herein has been, a labor organization and trade union engaged in representing employees for the purposes of collective bargaining. At all times relevant herein, the plaintiff and its duly authorized officers or agents have been and now are representing or acting for employee members of the plaintiff in the State and District of Maine, and in particular have been and are now representing and acting for members of the plaintiff organization who are employees of the defendant corporation.

3. The defendant, Goodall-Sanford Inc., is a corporation duly chartered, organized and existing under and by virtue of the laws of the State of Maine, with its principal office and place of business at Sanford, in the County of York, State and District of Maine.

4. The defendant corporation is engaged in the business of manufacturing and selling textile products which move in interstate commerce, and its conduct of

said business is such that it is in interstate commerce and affects interstate commerce within the meaning of federal laws and, in particular, the Labor Management Relations Act, 1947, 29 USCA, Section 185.

5. The plaintiff is the sole and exclusive statutory collective bargaining representative of, and agency for, all of the production and maintenance employees of the defendant corporation, including working-foreman, employed at Sanford and Springvale, Maine.

6. The plaintiff labor organization and the defendant corporation had entered into and executed a collective bargaining agreement on October 1, 1951. The said collective bargaining agreement was renewed by the parties thereto on July 29, 1953, to continue in full force and effect until July 15, 1955, unless either party were to give a notice to modify it sixty days prior to July 15, 1954. On May 12, 1954, the defendant corporation gave notice of modification to the plaintiff labor organization, as a result of which a supplemental agreement was entered into and executed by the plaintiff and defendant, effective June 21, 1954. Because of the execution of said supplemental agreement, the defendant corporation withdrew the aforesaid notice of May 12, 1954, such that the agreement dated October 1, 1951, as renewed July 29, 1953, and as supplemented by the supplemental agreement effective June 21, 1954, constitutes the entire collective bargaining agreement between the plaintiff labor organization and the defendant corporation in full force and effect until July 15, 1955.

7. In said contract the following relevant provisions appear:

A. ARTICLE VI, A-3. "CONTINUOUS SERVICE: Employee's service in an occupation will be continuous except as broken under the provisions of Section

E (Transfers) of this Article VI or by termination of his employment under the provisions of Article VII."

B. ARTICLE VII, A. "REASONS FOR TERMINATION: An employee's continuous service and his employment with the Company shall be terminated by:

1. Voluntary Quit.
2. Discharge for cause.
3. Absence from work for a period of eighteen (18) months or more for any reasons other than to fill a Union position to which the employee was elected or appointed or where an entire operation has been discontinued."

C. ARTICLE VIII, B. "ARBITRATION: If a satisfactory adjustment is not reached within ten (10) working days after initiation of conferences in Step 4, any dispute which relates solely to the meaning and application of this Agreement or any individual grievance may be referred to arbitration by written notice by either party to the other. If the written notice is not given within five (5) working days after the completion of Step 4, the grievance shall be considered as settled, and any right to arbitrate waived. Arbitration shall be in accordance with the following procedure:

1. The arbitrator shall be a single arbitrator selected from a panel of three agreed to by the Union and the Company. If the Company and the Union are unable to agree on one of the three, the arbitrator who will first be available for a hearing shall be selected.
2. The Arbitrator shall have no power to add to or to subtract from the terms of this Agreement.

3. The Arbitrator's decision shall be in writing and shall be final and binding on the Company and the Union.

4. Awards or settlements of grievances shall be effective as of the date on which the written grievance was first presented, except as otherwise provided by this Agreement, or by mutual consent.

8. On the 29th day of December, 1954, approximately 1136 production and maintenance employees, including working foremen, of the defendant corporation, employed by the defendant at Sanford and Springvale, Maine, were notified by the defendant that their employment with Goodall-Sanford, Inc. was terminated as of December 29, 1954, and that effective said date their names were being removed from the payroll records of the company. The ground of said termination was stated to be that

> "owing to the liquidation proceedings in Mills A, B, C and Print Works. . . . and the subsequent sale of the mills, the department in which (the employees) previously worked had been completely shut down and will not reopen."

9. On the 30th day of December 1954, by letter signed by Herman Ackroyd, president of United Textile Workers of America, A. F. L. Local 1802, a protest was filed with the defendant charging that the purported termination by the defendant of approximately 1136 production and maintenance employees constituted a breach of the collective bargaining agreement between the plaintiff labor organization and the defendant corporation. The said protest stated that it was to be accepted as a protest covering all workers affected, and requested that a meeting be held at the earliest convenience to discuss the matter.

10. On the 13th of January 1955, a meeting was held between the Conference Committee of the plaintiff labor organization and representatives of the defendant corporation. Subsequent to said meeting, the defendant corporation notified the approximately 1136 employees whom the company had purportedly terminated in their employment as of December 29, 1954, that the termination date of December 29, 1954. was rescinded and that a new termination date,, January 29, 1955, was fixed.

11. By letter dated January 31, 1955, duly signed by Herman Ackroyd in his capacity as president of the plaintiff labor organization, the action of the defendant in purporting to terminate the employment of approximately 1136 of its maintenance and production employees for whom the plaintiff labor organization was the exclusive, statutory collective bargaining representative and agency, was again protested as a violation by the defendant of the collective bargaining agreement in force and effect.

12. On February 18, 1955, approximately 263 additional production and maintenance employees of the defendant corporation, employed by the defendant either at Sanford or Springvale, Maine, or both, were notified that their employment with Goodall-Sanford, Inc. was terminated, effective February 18, 1955, and that as of said date their names were being removed from the payroll records of the company. The ground of this purported termination was specified to be the same as that previously given regarding the purported December 29, 1954 termination, as set forth above in paragraph 8 hereof.

13. By letter dated February 23, 1955, the plaintiff labor organization notified the defendant that it was requesting arbitration of the entire dispute in accordance

with the provisions of Section B of Article VIII of the collective bargaining agreement, as set forth in paragraph 7 aforesaid. In said letter the plaintiff labor organization submitted the names of three persons who had previously constituted a panel which had been agreed to by the plaintiff and the defendant, of whom one was to be selected—the plaintiff specifying in said letter that any one of the three persons would be acceptable to the plaintiff labor organization as an arbitrator.

14. On the 8th day of March 1955, the defendant corporation notified the plaintiff labor organization in writing that it was refusing plaintiff's request for arbitration and that it would not arbitrate the dispute regarding the termination of employment of its employees since the defendant corporation did not consider the termination of such employees arbitrable under the contract. The defendant corporation adopted this position in spite of and in the face of the provision of the collective bargaining agreement in Article VIII (B) thereof, set forth aforesaid, that at the request of either party to the contract

> "any dispute which relates solely to the meaning or application of this agreement . . . may be referred to arbitration."

The request of the plaintiff labor organization for arbitration was based on the contention that under a true construction and interpretation of Article VII of the collective bargaining agreement, as set forth aforesaid, the defendant corporation's action in terminating the employment of its employees constituted a violation of the contract.

15. Because of the refusal of the defendant corporation, though requested by the plaintiff, to submit the dispute concerning the meaning and interpretation of Article VII of the contract to arbitration, the plaintiff

brings this action in court and avers that the defendant's purported termination of the employment of approximately 1400 of its production and maintenance employees in the manner and on the grounds as above described, is a violation and breach of Article VII of the collective bargaining agreement.

16. As a result of the breach of contract committed by the defendant corporation, as above set forth, the following injuries have been caused.

A. As to life insurance benefits which were carried in the amount of $500, together with provisions for double indemnity, on the life of each employee, the company paying for the premiums on a group basis: Each employee who has been wrongfully terminated, in order to keep his life insurance in force, is obliged within thirty-one days after the date of termination to pay

> "the premium applicable to the class of risks to which he belongs, and to the form and amount of the policy at his then attained age."

The amount of premiums thus required to keep the insurance in force is far greater than what would have been required had the employee been placed on lay-off and his name retained on the payroll records of the company rather than terminated. An employee on lay-off—rather than terminated in his employment—is afforded the benefit that the defendant corporation will continue the payment of life insurance premiums, at the group rate, for the calendar month in which the lay-off began and one calendar month thereafter; and at the expiration of such period the said employee, on lay-off, could continue his policy in force by himself paying the life insurance premium at the group rate which was being paid by the company.

As to those employees terminated by the defendant wrongfully and in violation of the contract on January 29, 1955, the thirty-one day period for the employees to convert their policies has already expired and a large number of said employees, unable to afford the substantially increased premiums, were not able to effect a conversion. Their insurance status, in the event they develop claims regarding their life insurance coverage, is thus in doubt, and a situation has been created inflicting irreparable damage upon them for which any remedies at law for the breach of contract committed by the defendant are uncertain, speculative, inadequate and incomplete. It is only by restoration of the names of the said employees to the payroll records of the company, as a remedy for the breach of contract by defendant, that the insurance injuries can be properly and satisfactorily remedied. The reinstatement of the employees upon the defendant corporation's records, on lay-off status, will produce a reinstatement of the life insurance policies such that the employees, after the expiration of the calendar month in which lay-off began and one calendar month thereafter, will be able to maintain life insurance policies in force by payment of the substantially lower group premium rates.

As to those employees whose employment was wrongfully terminated by the defendant corporation on February 18, 1955, there is imminent danger that a substantial number of them will not be financially able within thirty-one days thereafter to effect a conversion of their life insurance at the much higher premium rate which they will be obliged to pay because of the wrongful termination of their employment. There is thus the imminent danger that they are exposed to the immediate risk, by the wrongful conduct of the defendant corporation, that their

life insurance status will be rendered clouded and uncertain subjecting them to irreparable damage for which any remedies at law are uncertain, speculative, inadequate and incomplete. It is thus necessary, as to these employees that, to remedy the breach of contract committed by the defendant, they be reinstated upon the payroll records of the company on lay-off status—in order that they shall have the opportunity to continue their insurance in force, by payment of premiums on a group basis, and not be subjected to the risk that their life insurance will lapse because of their inability to pay the much larger premium rates applicable to the classes of risks to which they belong and to the form and amount of the policies at their then attained age.

As to those employees wrongfully terminated in their employment by the defendant corporation in breach of the collective bargaining agreement, as set forth aforesaid, who have already converted their life insurance by paying the substantially higher premium rates thus wrongfully required of them, money damages are claimed for the losses thus sustained.

B. As to health and accident insurance, the premiums for which are required to be paid by the defendant corporation on a group basis rate, and by virtue of which the employees are entitled to a weekly benefit of $22.50 per week, lasting for a maximum of thirteen weeks for any one disability, (beginning on the eighth day in the case of illness, and on the first day in the case of accident,) and are also entitled to medical and surgical benefits and maternity benefits: The defendant's breach of contract in purporting to terminate its employees, as aforesaid, had deprived all of the said employees thus wrongfully terminated, of an automatic extension of the benefits for thirty-one days thereafter, which would be the insurance coverage in the event the employees were not

terminated but were laid off and kept on the payroll records of the company, as required by the contract.

As a result thereof, the health and accident insurance coverage of many employees wrongfully terminated by the defendant on January 29, 1955, whose health and accident claims originated within thirty-one days after January 29, 1955, has been rendered doubtful. Thereby, said employees have been subjected to damage that is irreparable at law and for which the remedies at law are uncertain, speculative, inadequate and incomplete, since said employees will be unable to refute that their employment might not otherwise have been terminated, prior to the origin of their claims, on some ground permitted by the collective bargaining agreement between plaintiff and defendant. It is therefore requisite, to afford said employees adequate remedies, that their names be reinstated on the payroll records of the company as of January 29, 1955, on lay-off status,—thereby to maintain their health and accident insurance coverage effective for thirty-one days subsequent to the 29th day of January, 1955.

As to those employees wrongfully terminated in their employment by the defendant on February 18, 1955, all of them are exposed to the immediate and imminent risk of irreparable damage for which the remedies at law are uncertain, speculative, inadequate and incomplete, in the event that before the expiration of thirty-one days from the 18th of February 1955, they become entitled to make claims for benefits under their health and accident coverage, concerning the effectiveness of which the defendant has created a cloud by its wrongful act of terminating the employment of said employees. To provide satisfactory remedy against the wrong thus perpetrated by the defendant, it is requisite that the names

of said employees be ordered reinstated on the payroll records of the defendant, on lay-off status, as of February 18, 1955,—thereby to maintain their health and accident insurance benefits in effect for thirty-one days from the said 18th of February 1955.

C. As to Blue Cross hospitalization benefits for which the defendant corporation in the event of lay-off, was required to continue to pay premiums at a group rate for the benefit of the employee himself until the fifteenth day of the calendar month next following the date of layoff, and as to which, in the event lay-off continue thereafter, the employee himself had the privilege of paying the premium, at the group rate, to keep his policy alive, but as to which in the event of termination of employment, the employee is obliged immediately to pay for himself at a higher premium rate without the benefit of group savings: The wrongful act of the defendant corporation in terminating the employment of its employees, as set forth aforesaid, has produced injuries as follows:

(1) As to those employees wrongfully terminated on January 29, 1955, a substantial number have been unable to afford the additional premiums, in excess of the group rate, necessary to continue their hospitalization insurance in force. A cloud has thus been cast upon their Blue Cross hospitalization insurance rights such that for any hospitalization claims of said employees originating after the 15th day of February 1955, the remedies at law are uncertain, speculative, inadequate and incomplete. To furnish said employees a satisfactory remedy against the defendant's wrongful termination of their employment, it is necessary that they be reinstated on the payroll records of the company, on lay-off status, that they may have the benefit of continuing their policies in force

(after February 15, 1955) by paying the lower group premium rates.

(2) As to those employees wrongfully terminated on February 18, 1955, a substantial number of them are exposed to the immediate and imminent danger that they will lose their group Blue Cross hospitalization insurance because of inability to pay the higher premium rates which the termination of their employment requires. As to such employees, there is thus the imminent danger of irreparable damage, in the event they shall have claims for hospitalization benefits for which the remedies at law are uncertain, speculative, inadequate and incomplete. To protect their rights, it is necessary that they be reinstated on the payroll records of the defendant corporation, on lay-off status, so that they shall have the opportunity of continuing their Blue Cross hospitalization in force (after March 15, 1955) by paying premiums therefor at the lower group rate.

(3) As to those employees wrongfully terminated by the defendant corporation either on January 29 or February 18, 1955, whose claim for insurance benefits originated before the expiration of fifteen days in the calendar month next following the date of the wrongful termination, or who renegotiated their Blue Cross hospitalization insurance—in spite of termination—by paying premiums therefor at rates higher than the group premium rate which would have been available to them had they been retained on the payroll records of the defendant, damages are claimed and sought.

D. Pursuant to Article X-C of the collective bargaining agreement in force and effect between the plaintiff and defendant, the employees of the defendant are entitled to pension, or retirement, benefits as follows:

ARTICLE X-C. PENSIONS: In accordance with an agreement between the parties dated May 25, 1951, the Company on approval by the Wage Stabilization Board will modify its present retirement benefits to the following. The Company will pay retirement benefits to employees who, having attained the age of 65, retire from employment with the Company and have at the time of their retirement completed 20 years or more of continuous service with the Company.

(1) Retirement benefits will be in the amount of $20 a month for such employees who have completed 20 years of continuous service but not more than 24 years of continuous service.

(2) Retirement benefits will be in the amount of $25 a month for those that have completed 25 or more years of continuous service.

The wrongful termination by the defendant of the employment of approximately 1436 of its production and maintenance employees on January 29 and February 18, 1955, has deprived those employees, otherwise eligible for pension, who have already attained the age of sixty-five but have not yet chosen to retire, or who will attain the age of sixty-five between January 29, 1955—or February 18, 1955,—and July 15, 1955, (the expiration date of the collective bargaining agreement) of the right to retire from employment with the company and collect retirement benefits. This inflicts irreparable damage upon said employees of the defendant for which the remedies at law are uncertain, speculative, inadequate and incomplete. To afford said employees proper remedy regarding their pension benefits, it is requisite that the names of those employees whose pension rights have

been affected by the wrongful termination of employment, perpetrated by the defendant, be reinstated on the payroll records of the defendant, on lay-off status, either as of January 29, 1955, or as of February 18, 1955, depending on which of said dates was the date of termination in the individual case.

E. Pursuant to Article V, B & C of the collective bargaining agreement between plaintiff and defendant, the production and maintenance employees of the defendant employed at Sanford or Springvale, Maine, are entitled to vacation pay for the current vacation year as follows:

> ARTICLE V, B. "ELIGIBILITY REQUIREMENTS: During the term of this agreement an employee on the payroll of the Company on June 1st of the vacation year and who has worked at least 900 hours in the twelve-month period from June 1 of the preceding year to May 31 of the vacation year (both dates included) shall be eligible for vacation with pay if he qualifies under the following requirements:
>
> (1) An employee with one (1) year, but less than three (3) years of continuous service with the Company shall receive one (1) week of vacation with forty (40) hours' pay.
>
> (2) An employee with three (3) years, but less than five (5) years of continuous service with the Company shall receive one (1) week of vacation with sixty (60) hours' pay.
>
> (3) An employee with five (5) years or more of continuous service with the Company shall receive two (2) weeks of vacation with eighty (80) hours' pay.

Employees who have returned with continuous seniority from the armed services of the U. S. during the twelve-month period from June 1 of the preceding year to May 31 of the vacation year, are not required to have worked 900 hours during that period in order to qualify for vacations with pay.

ARTICLE V, C. VACATION PAY: Vacation pay will be computed by multiplying the number of hours to which the employee is entitled by the employee's average hourly earnings. Average hourly earnings for day workers will be equal to the regular rate which the employee received during the payroll week which includes the first of June immediately preceding the vacation period. If the employee did not work during that week the rate which the employee received during the week next preceding June 1 in which the employee worked will be used. The average hourly earnings exclusive of overtime for a four (4) week period in month of May immediately preceding the vacation period. If the employee did not work during the month of May his average straight-time hourly earning during the next month preceding May in which the employee worked will be used.

The wrongful termination by the defendant of the employment of approximately 1436 of its employees on January 29 and February 18, 1955, as set forth aforesaid, prevents said employees from being on the payroll records of the company on June 1st of the current vacation year and has thereby wrongfully purported to render such employees immediately ineligible for vacation pay for the current vacation year. Defendant's wrongful act and breach of contract in terminating the employment of said employees, has thus subjected the rights of said

employees to vacation pay to a cloud. It threatens damage to said employees for which the remedies at law are uncertain, speculative, inadequate and incomplete in that said employees of the defendant, so long as their names remain deleted from the payroll records of the defendant between January 29, or February 18, 1955 (as the case may be) and June 1, 1955 will be unable, in any action for damages which might be instituted after June 1, 1955, to disprove that their employment might not have been terminated and their names removed from the payroll records, prior to June 1, 1955, for some reason, or ground, permitted by the collective bargaining contract. Hence, to afford said employees effective remedy against the defendant's breach of contract, and to prevent the imminent threat of irreparable damage to said employees, it is requisite that the names of all employees wrongfully terminated on January 29 or February 18, 1955, be reinstated on the payroll records of the defendant, on lay-off status, as of the date of purported termination,—so that said employees may continue eligible for vacation pay, unless and until their names are subsequently removed from defendant's payroll records before June 1, 1955, for a reason, if any, permitted by the collective bargaining agreement between plaintiff and defendant.

17. Plaintiff has been informed by defendant that in the immediate future defendant intends to terminate the employment of an additional 1800 of its production and maintenance employees employed by the defandant at Sanford or Springvale, Maine. Defendant has informed plaintiff that said termination will be purportedly effected for the same reason and on the same ground as the purported termination of the other approximately 1436 employees on January 29 and February 18, 1955—all as alleged aforesaid. Such termination may occur at any

moment. There is thus an imminent and immediate threat and danger of a further violation by the defendant of the collective bargaining agreement in effect between the plaintiff and the defendant, involving an additional approximately 1800 employees of the defendant, who will be subjected to irreparable damage concerning life insurance, health and accident insurance, hospitalization insurance, pension and vacation pay benefits for which, for the same reasons as set forth above regarding the employees wrongfully terminated on January 29 and February 18, 1955, remedies at law will be uncertain, speculative, inadequate and incomplete.

WHEREFORE PLAINTIFF PRAYS:

That this Honorable Court order and decree specific performance of the contractual clauses pertaining to arbitration, and order the Defendant to submit the matter in dispute, the Union having so requested, to arbitration, and to select, within such time as the Court shall order, one of the three persons, who had previously constituted a panel which had been agreed to by the Union and the Defendant, as arbitrator; and, in the meantime, and pending the submission of the matter to arbitration, this Court award such relief by way of restraining order or injunction, as to this Court may seem meet and proper under all the circumstances.

DATED at Portland, State and District of Maine this 14th day of March, 1955.

UNITED TEXTILE WORKERS OF AMERICA, A. F. L.
LOCAL NO. 1802

By HERMAN ACKROYD,
President.

[fol. 26a] "EXHIBIT A" TO STIPULATION

Agreement between Goodall-Sanford, Inc., Sanford, Maine, and United Textile Workers of America, American Federation of Labor, Local 1802.

October 1, 1951

Renewed July 29, 1953

* * * * * * *

[fol. 26b] Purpose of Agreement

It is the intent and purpose of the parties hereto to promote and improve the industrial and economic relations between the Company, its employees, and the Union, and to establish and maintain a basic understanding in relation to rates of pay, hours of work, and other conditions of employment toward full cooperation, good quality of production, and successful operation of the Company's plants.

Article I—Recognition

A. Bargaining Unit: The Company recognizes the Union as the exclusive collective bargaining agency for all its production and maintenance employees including working-foremen employed at Sanford and Springvale, Maine, in respect to rates of pay, wages, hours, and other conditions of employment. Executives, overseers, second hands, foremen, section hands, guards, and all office workers, laboratory workers, and research workers are not considered production and maintenance employees under this agreement.

* * * * * * *

[fol. 26c] D. Rights of Management: The management of the Company's business, including the determination of the type of products to be manufactured, new methods and processes of production, including equitable and reasonable work loads, the direction of its working force and the right to hire, lay-off and suspend employees is vested exclusively in the Company, subject to the provisions of this agreement.

* * * * * * *

[fol. 26d] Article III—Hours of Employment

A. Hours of Work: The normal hours of work for each shift shall be forty (40) hours per week divided into five (5) days of eight (8) hours each, Monday to Friday inclusive, but this provision shall not apply to power plant and filter plant employees. The hours of work per day or per week may be decreased at the discretion of the Company, subject to the provisions of this agreement.

[fol. 26e] Article V—Vacations

A. Vacation Period: The company will close normal production operations during some week in the month of July to give all employees covered by the terms of this agreement one week's vacation from work. The Company will announce the vacation week on or before May 1 of the year involved. Employees necessary for maintenance and repair work shall be given their week's vacation during a different week than the production employees. Employees entitled [fol. 26f] to receive eighty (80) hours' vacation pay under this Article shall at their request and by prior arrangement with their overseers have one (1) additional week's vacation at some time after the vacation shutdown.

B. Eligibility Requirements: During the term of this agreement an employee on the payroll of the Company on June 1st of the vacation year and who has worked at least 900 hours in the twelve-month period from June 1 of the preceding year to May 31 of the vacation year (both dates included) shall be eligible for vacation with pay if he qualifies under the following requirements:

1. An employee with one (1) year, but less than three (3) years of continuous service with the Company shall receive one (1) week of vacation with forty (40) hours' pay.

2. An employee with three (3) years, but less than five (5) years of continuous service with the Company shall receive one (1) week of vacation with sixty (60) hours' pay.

3. An employee with five (5) years or more of continuous service with the Company shall receive two (2) weeks of vacation with eighty (80) hours' pay.

Employees who have returned with continuous seniority from the armed services of the U. S. during the twelve-month period from June 1 of the preceding year to May 31 [fol. 26g] of the vacation year, are not required to have worked 900 hours during that period in order to qualify for vacations with pay.

C. Vacation Pay: Vacation pay will be computed by multiplying the number of hours to which the employee is entitled by the employee's average hourly earnings. Average hourly earnings for day workers will be equal to the regular rate which the employee received during the payroll week which includes the first of June immediately preceding the vacation period. If the employee did not work during that week the rate which the employee received during the week next preceding June 1 in which the employee worked will be used. The average hourly earnings for a piece or incentive worker shall be the average straight-time hourly earnings exclusive of overtime for a four (4) week period in the month of May immediately preceding the vacation period. If the employee did not work during the month of May his average straight-time hourly earnings during the next month preceding May in which the employee worked will be used.

D. Vacation Bonus: During the term of this agreement each employee on the payroll on June 1st of the vacation year who does not qualify for vacation pay under the foregoing provisions shall be entitled to a vacation bonus under the following conditions:

[fol. 26h] 1. If he has been in the continuous employment of the Company for three (3) months prior to June 1 of the year in which the vacation shutdown occurs, he shall receive a vacation bonus amounting to two (2) per cent of his total earnings exclusive of overtime for the twelve months ending on May 31 preceding such June 1.

2. If he has been in the continuous employment of the Company for three (3) years but less than five (5) years prior to June 1 of the year in which the vacation shutdown occurs, he shall receive a vacation bonus amounting to three (3) per cent of his total earnings exclusive of overtime for the twelve months ending on May 31 preceding such June 1.

3. If he has been in the continuous employment of the Company for five (5) years or more prior to June 1 of the year in which the vacation shutdown occurs, he shall receive a vacation bonus amounting to four (4) per cent of his total earnings exclusive of overtime for the twelve months ending on May 31 preceding such June 1.

Article VI—Seniority

* * * * * * *

[fol. 26i] 3. Continuous Service: An employee's service in an occupation will be continuous except as broken under the provisions of Section E (Transfers) of this Article VI or by termination of his employment under the provisions of Article VII.

* * * * * * *

[fol. 26j] Article VII

Termination of Employment

A. Reasons for Termination: An employee's continuous service and his employment with the Company shall be terminated by:

1. Voluntary Quit.
2. Discharge for cause.
3. Absence from work for a period of eighteen (18) months or more for any reasons other than to fill a [fol. 26k] Union position to which the employee was elected or appointed or where an entire operation has been discontinued.

* * * * * * *

[fol. 26l] Article VIII

Adjustment of Grievances

A. Grievance Procedure: The following procedure shall be employed in adjusting grievances and disputes:

Step 1. The matter may be taken up between the aggrieved employee, the Union Steward for the occupation and the Overseer of the department.

Step 2. If not satisfactorily adjusted, the matter may

be reduced to writing on forms provided by the Company, and taken up between the Union Conference Committeeman, Union Steward, the employee, and the Agent or Superintendent of the Mill involved.

Step 3. If not satisfactorily adjusted within five (5) working days after presentation of the written grievance to the Agent or Superintendent the matter may be taken up between Union Representatives (President, Vice President, Conference Committeeman, Steward), the employee, and representatives of the Industrial Re- [fol. 26m] lations Department and of the Mill involved. Meetings will be held Tuesdays, and if necessary, Wednesdays unless otherwise agreed.

Step 4. If not satisfactorily adjusted within ten (10) working days the matter may be taken up between representatives of the Local Union and the International Union, the Union Conference Committee, the Director of Industrial Relations and representatives of the Company.

B. Arbitration: If a satisfactory adjustment is not reached within ten (10) working days after initiation of conferences in Step 4, any dispute which relates solely to the meaning and application of this Agreement or any individual grievance may be referred to arbitration by written notice by either party to the other. If the written notice is not given within five (5) working days after the completion of Step 4, the grievance shall be considered as settled, and any right to arbitrate waived. Arbitration shall be in accordance with the following procedure:

1. The arbitrator shall be a single arbitrator selected from a panel of three agreed to by the Union and the Company. If the Company and the Union are unable to agree on one of the three, the arbitrator who will first be available for a hearing shall be selected.

[fol. 26n-26o] 2. The Arbitrator shall have no power to add to or to subtract from the terms of this Agreement.

3. The Arbitrator's decision shall be in writing and shall be final and binding on the Company and the Union.

4. Awards or settlements of grievances shall be effective as of the date on which the written grievance was first presented, except as otherwise provided by this Agreement, or by mutual consent.

[fol. 26p] Article X

Insurance Benefits

[fol. 26q] C. Pensions: In accordance with an agreement between the parties dated May 25, 1951, the Company on approval by the Wage Stabilization Board will modify its present retirement benefits to the following. The Company will pay retirement benefits to employees who, having attained the age of 65, retire from employment with the Company and have at the time of their retirement completed 20 years or more of continuous service with the Company.

(1) Retirement benefits will be in the amount of $20 a month for such employees who have completed 20 years of continuous service but not more than 24 years of continuous service.

(2) Retirement benefits will be in the amount of $25 a month for those that have completed 25 or more years of continuous service.

[fol. 26r] Article XIII

Agreements and Amendments

It is understood that, except for those written agreements which are initialled by the parties as of the date of this agreement, all prior agreements were terminated on October 1, 1951, and that this Contract contains all matters on which the parties are mutually agreed. If at any time while this agreement is in effect the parties desire to modify, amend, or add to it in any respect either retroactively or prospectively they may do so by mutual assent. Agreements to modify, amend, or supplement this Contract shall be reduced to writing and signed by representatives of the Union and the Company.

[fol. 26s] Article XVI

Waiver

The parties acknowledge that during the negotiations which resulted in this agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this agreement. Therefore, the Company and the Union, for the life of this agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to, or covered in this agreement, or with respect to any subject or matter not specifically referred to or covered in this agreement, even though such subjects or matter may not have been within the knowledge or contemplation of either or both parties at the time that they negotiated or signed this agreement.

DEFENDANT'S ANSWER

1. The defendant denies that this is a civil action arising under the Labor Management Relation Act of 1947 and denies that this Court has jurisdiction of the action by virtue of Section 301 of Title III of the Labor Management Relations Act, 1947, 29 U. S. C. A., Section 185, and denies that this action is a suit within the meaning of said Section 185 of said Labor Management Relations Act of 1947.

2. The defendant admits the allegations in Paragraph Numbered 2 of said Complaint.

3. The defendant admits the allegations in Paragraph Numbered 3 of said Complaint.

4. Except as hereinafter specifically admitted, the defendant denies each and every material allegation in Paragraphs Numbered 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16A, B, C (1), (2), (3), D, E and 17.

5. And further answering, the defendant says:

For a considerable period prior to July, 1954, the management of the defendant corporation recognized that manufacturing costs at Sanford and Springvale were non-competitive and, unless such costs could be reduced, operations would have to be discontinued. Despite efforts to reduce said costs, the consolidated net loss of the defendant corporation for the fiscal year ending June 30, 1954, before tax recovery, amounted to $4,614,000.00.

Decision was therefore made to discontinue the manufacturing of carpeting and automotive, furniture, transportation and decorative fabrics in the Sanford division, and it was found necessary, soon thereafter, to discontinue production in the women's wear woolen mill.

Operations in the Goodall division for the manufacture of Palm Beach cloth and similar fabrics was continued. However, for the three months' period July 1 to October 2, 1954, the defendant corporation sustained a consolidated net loss of $771,069.00, and, for the period October 3, 1954 to January 1, 1955, the defendant corporation sustained a further consolidated net loss of $2,329,769.00.

The basic difficulty was extremely high unit cost, a very substantial portion of which was attributable to labor costs.

As a result of these continued losses there was no alternative but to discontinue all operations at Sanford and Springvale.

The decision to discontinue all operations, which was, of course, a prerogative of management, which should not and could not be delegated either to the union or to an arbitrator, carried with it also the right to terminate the employment of employees, and nothing in the collective bargaining agreement covered, or purported to cover, such a cessation of business and termination of employment.

Thereupon, in accordance with the decision of Management to terminate all operations at its mills in Sanford and Springvale, the defendant corporation inaugurated a program of the orderly liquidation of various departments of its operations at Sanford and Springvale and, on the 29th day of December, 1954, notified approximately 1136 of its production and maintenance employees, who had theretofore been employed in Mills A, B, C and the Printworks, that, effective December 29, 1954, their names were being removed from the payroll records of the Company and their respective employments with the Company were terminated as of December 29, 1954;

that on the 30th day of December, 1954, by letter signed by Herman Ackroyd, President of United Textile Workers of America, A. F. L. Local 1802, the termination by the defendant corporation of said 1136 production and maintenance employees was protested and a meeting of the union representatives with the Defendant corporation was requested.

Thereafterwards, on January 13, 1955, a meeting between the representatives of the plaintiffs and of the defendant was held and, as a result thereof, each of said 1136 employees was notified that the defendant corporation was deferring the effective date of the termination to January 29, 1955, and said employees were advised that persons who had otherwise qualified for holiday pay January 1, 1955, would be paid such holiday pay, and that arrangement had been made for the continuation of group insurance policies to January 29, 1955, and for the conversion of group life insurance into individual life insurance policies during the period of 31 days after January 29, 1955.

By letter dated January 31, 1955, signed by said Herman Ackroyd, a further meeting of the union representatives and the defendant corporation was requested to decide upon procedure to be followed in an attempt to resolve the dispute.

On February 18, 1955, the defendant notified approximately 263 production and maintenance employees of the defendant corporation employed at Sanford, that owing to the liquidation proceedings in Mills "A," "B," "C" and "Printworks," and the subsequent sale of the mills, the department in which each employee previously worked had been completely shut down and would not reopen, and, since there was no further possibility of continuance of operations in any of the departments

affected, said 263 employees were notified that the employment of each with Goodall-Sanford was terminated and each employee was advised that their names would be removed from the payroll records of the company, effective as of February 18, 1955; that by letter of February 23, 1955, signed by said Herman Ackroyd, the plaintiffs advised the defendant corporation that, concerning the termination notices sent to Mill "B" and Mill "A" employees, the union was requesting arbitration of the dispute; that thereafterwards, on March 2, 1955, a meeting was held between representatives of the plaintiff labor organizations and the defendant corporation with respect to termination notices sent to Mills "B," "C," "A" and "Printworks," at which meeting the union was advised by the defendant corporation that the company had the absolute right to completely shut down all or any part of its business and, where there was no possibility of future reopening, to terminate its employees and that this action was not covered and was not attemped to be covered in the collective bargaining agreement between the company and the union dated October 1, 1951, and renewed July 29, 1953; and that the company did not consider that the termination of such employees was arbitrable under the contract, and the request for arbitration was refused, and, as requested by the union, the position of the company was confirmed in writing by a letter from the company to the union dated March 8, 1955.

The defendant corporation has now completely ceased all production operations in the Sanford and Springvale mills and all of the real estate and buildings have been sold and a considerable portion of the mills have been re-sold by the purchaser to other industries, which are now operating in portions of the buildings.

Most of the machinery and equipment have also been sold and removed from the mill buildings.

The defendant corporation will not resume any operations in the future at either Sanford or Springvale.

Dated April 5, 1955.

GOODALL-SANFORD, INC.

By WILLIAM B. MAHONEY,
Its Attorney.

MOTION FOR SUMMARY JUDGMENT PURSUANT TO RULE 56

And now come the plaintiffs in the above entitled cause, after the expiration of twenty days from the commencement of the said action, and after the filing of an answer by the defendant, and move this Court to render summary judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure, upon that part of the plaintiffs' complaint, as amended, which pertains to decreeing specific performance of the contractual clauses pertaining to arbitration—all as set forth in plaintiffs' complaint with particular reference to paragraph 5 among the prayers for relief, as contained in the amended complaint.

Summary judgment is sought and requested to be rendered in favor of plaintiffs, with regard to the matter of the specific enforcement of the contractual clauses pertaining to arbitration, on the ground that the pleadings and all other matters now on file and part of the record in this case show that there is no genuine issue as to any material fact regarding the issue of specific performance of the arbitration clauses of the agreement and

that the plaintiffs are entitled to a judgment decreeing specific performance of the arbitration clauses of the contract, as a matter of law.

Dated at Portland, State and District of Maine, this fifteenth day of April, A. D. 1955.

SIDNEY W. WERNICK,
Attorney for the Plaintiff.

MOTION TO DISMISS THE COMPAINT

The Defendant moves that the complaint be dismissed because the Supreme Court of the United States on March 28, 1955, has decided that District Courts of the United States do not have jurisdiction under Section 301—L. R. M. A. of 1947 to grant the relief demanded in the Complaint.

Salaried Employee's Assn. vs. Westinghouse Electric Co. U. S. Sup. Ct. decided March 28, 1955.

See also Local 205 Electrical Workers vs. General Electric Co., 27 Labor cases, 69,085 P. 88,567, GS.

Dated April 20, 1955.

GOODALL-SANFORD, INC.,
Defendant.

By WILLIAM B. MAHONEY,
Its Attorney.

OPINION AND ORDER

CLIFFORD, J.

This matter comes before this Court upon the motion of the plaintiffs for summary judgment upon that part of their complaint, as amended, in which they request specific performance of the arbitration clauses of a collective bargaining agreement. The plaintiffs instituted their action under Section 301 of the Labor Management Relations Act of 1947, 29 USCA, Section 185.

With regard to the aforementioned request for specific performance, this Court is of the opinion that there is no genuine issue of material fact. Briefly, the facts are as follows:

The plaintiff, United Textile Workers of America, A. F. L. Local, 1802, and the plaintiff, United Textile Workers of America, A. F. L., are both unincorporated associations and at all times relevant herein, have been labor organizations and trade unions engaged in representing employees for the purposes of collective bargaining. The plaintiffs have been representing, or acting for, employee-members of the plaintiff labor organizations in the State and District of Maine; and, in particular, have been representing and acting for members of the plaintiff organizations who are employees of the defendant corporation, Goodall-Sanford, Inc. They are the sole and exclusive statutory collective bargaining representative of, and agency for, all the production and maintenance employees of the defendant corporation, including working foremen, employed at Sanford and Springvale, Maine.

The defendant corporation, Goodall-Sanford, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of Maine with its principal office and place of business at Sanford, Maine. As of

April 5, 1955, it has completely terminated all production operations in its Sanford and Springvale mills and all of the real estate and buildings have been sold. Prior to such termination, however, the defendant corporation was engaged in the business of manufacturing and selling textile products which moved in interstate commerce. Its conduct of said business was such that it affected interstate commerce within the meaning of Federal Laws and, in particular, the Labor Management Relations Act of 1947, 29 USCA Section 185.

On October 1, 1951, the plaintiff labor organizations and the defendant corporation entered into and executed a collective bargaining agreement which was renewed by the parties thereto on July 29, 1953. As thus renewed, said agreement provided, as to its duration, that the said agreement is to

> "continue in full force and effect until July 15, 1955, unless either party gives a notice to modify, 60 days prior to July 15, 1954."

On May 12, 1954, the defendant corporation gave notice of modification to the plaintiff labor organizations as a result of which a supplemental agreement was entered into and executed by the plaintiff and defendant on June 21, 1954. Because of the execution of said supplemental agreement, the defendant corporation withdrew the aforesaid notice of May 12, 1954, with the result that the agreement dated October 1, 1951, as renewed July 29, 1953, and as supplemented by the supplemental agreement executed June 21, 1954, constitutes the entire collective bargaining agreement between the plaintiff labor organizations and defendant corporation. The said collective bargaining agreement provides that it shall continue in full force and effect until July 15, 1955.

Among the provisions of said collective bargaining agreement between the plaintiffs and the defendant are found the following:

ARTICLE I-A BARGAINING UNIT:

"The Company recognizes the Union as the exclusive collective bargaining agency for all its production and maintenance employees including working-foremen employed at Sanford and Springvale, Maine, in respect to rates of pay, wages, hours, and other conditions of employment. Executives, overseers, second hands, foremen, section hands, guards, and all office workers, laboratory workers; and research workers are not considered production and maintenance employees under this agreement."

ARTICLE VI.-A-3. CONTINUOUS SERVICE:

"Employee's service in an occupation will be continuous except as broken under the provisions of Section E (Transfers) of this Article VI or by termination of his employment under the provisions of Article VII."

ARTICLE VII-A. REASONS FOR TERMINATION:

"An employee's continuous service and his employment with the Company shall be terminated by:

1. Voluntary quit.

2. Discharge for cause.

3. Absence from work for a period of eighteen (18) months or more for any reason other than to fill a Union position to which the employee was elected or appointed or where an entire operation has been discontinued."

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ARTICLE VIII-B. ARBITRATION:

"If a satisfactory adjustment is not reached within ten (10) working days after initiation of conferences in Step 4, any dispute which relates solely to the meaning and application of this Agreement or any individual grievance may be referred to arbitration by written notice by either party to the other. If the written notice is not given within five (5) working days after the completion of Step 4, the grievance shall be considered as settled, and any right to arbitrate waived. Arbitration shall be in accordance with the following procedure:

1. The arbitrator shall be a single arbitrator selected from a panel of three agreed to by the Union and the Company. If the Company and the Union are unable to agree on one of the three, the arbitrator who will first be available for a hearing shall be selected.
2. The Arbitrator shall have no power to add to or substract from the terms of this Agreement.
3. The Arbitrator's decision shall be in writing and shall be final and binding on the Company and the Union.
4. Awards or settlements of grievances shall be effective as of the date on which the written grievance was first presented, except as otherwise provided by this Agreement, or by mutual consent."

PURPOSE OF AGREEMENT.

"It is the intent and purpose of the parties hereto to promote and improve the industrial and economic relations between the Company, its employees, and the Union, and to establish and maintain a basic

understanding in relation to rates of pay, hours of work, and other conditions of employment toward full cooperation, good quality of production, and successful operation of the Company's plants."

ARTICLE XVI—WAIVER.

"The parties acknowledge that during the negotiations which resulted in this agreement each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this agreement. Therefore, the Company and the Union for the life of this agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to or covered in this agreement, or with respect to any subject or matter not specifically referred to or covered in this agreement, even though such subjects or matter may not have been within the knowledge or contemplation of either or both parties at the time that they negotiated or signed this agreement."

Because of continued heavy losses, the defendant corporation decided to terminate all operations at its mills in Sanford and Springvale, Maine, and inaugurated a program of liquidation. On December 29th, 1954, the defendant notified approximately 1136 of its production and maintenance employees, who had theretofore been employed in Mills "A," "B," "C," and the "Printworks" of the defendant corporation, that effective December 29, 1954, their names were being removed

from the payroll records of the company and that their respective employment with the company was terminated as of December 29, 1954. On February 18, 1955, the defendant corporation further notified approximately 263 production and maintenance employees of the defendant corporation employed at Sanford, that the employment of each with the defendant was terminated and each employee was advised that his name was being removed from the payroll records of the company, effective February 18, 1955.

The ground on which the aforesaid notices of termination was based was that owing to the liquidation proceedings in Mills "A," "B," "C," and "Printworks," and the subsequent sale of the mills, the department in which each employee had previously worked had been completely shut down and would not reopen.

On December 30, 1954, by letter signed by Herman Ackroyd, President of United Textile Workers of America, A. F. L., Local 1802, the purported termination by the defendant of the aforesaid approximately 1136 production and maintenance employees was protested and a meeting of the union representatives with the defendant corporation was requested. Such a meeting was held on January 13, 1955, and, as a result thereof, each of the aforesaid approximately 1136 employees was notified that the defendant corporation was deferring the effective date of termination, as to such employees, until January 29, 1955. Said employees were further advised that persons who had otherwise qualified for holiday pay on January 1, 1955, would be paid for such holiday pay, and that arrangements had been made for the continuance of group insurance to January 29, 1955, and for the conversion of group life insurance to individual life insurance policies to continue 31 days after January 29, 1955.

On January 31, 1955, by letter bearing said date and signed by the aforesaid Herman Ackroyd in his aforesaid capacity, a further meeting of the defendant corporation and union representatives was requested to decide upon the procedure to be followed in an attempt to resolve the dispute regarding the termination of employees of the defendant.

After the termination notices had been sent, on February 18, 1955, to an additional 263 production and maintenance employees, as set forth aforesaid, by letter of February 23, 1955, signed by the aforesaid Herman Ackroyd in his aforesaid capacity, the plaintiffs notified the defendant that they were requesting arbitration of the dispute, in accordance with the provisions of Section B of Article VIII of the collective bargaining agreement, particular reference being made to the termination notices sent to Mill "B" and Mill "A" employees. In said letter, plaintiffs further submitted the names of three persons, any one of whom the plaintiffs specified would be acceptable to the plaintiffs as an arbitrator. During the last five years when some forty or fifty matters had been submitted by the parties to arbitration, one or the other of the three designated persons had served as an arbitrator, with but two exceptions.

Thereafterwards, on March 2, 1955, a meeting was held between representatives of the plaintiff labor organizations and the defendant corporation with respect not only to the termination notices sent to Mill "B" and "A" employees but also to employees of Mill "C" and of the "Printworks." At this meeting, the plaintiffs were advised by the defendant that the defendant corporation regarded the question of the termination of its employees as a non-arbitrable question under the collective bargaining contract. Accordingly, the defendant corporation refused to submit the dispute concerning

the termination of its employees to arbitration. This refusal by the defendant was confirmed in writing, at the request of the plaintiffs, by a letter dated March 8, 1955.

The defendant corporation assigned as the reason for its refusal to submit the termination dispute to arbitration the contention that the collective bargaining agreement between the defendant and the plaintiffs does not cover, and does not attempt to cover, the situation where the defendant terminates its employees because it has completely shut down all or part of its business without possibility of reopening, as a result of continued heavy losses.

The dispute between the parties in this case concerns the right of the defendant corporation to terminate its production and maintenance employees for a reason, which admittedly is not included among those specified in Article VII—A.

The plaintiffs contend that the terms of Article VI-A-3 and VII-A, as well as other clauses of the collective bargaining agreement, manifest an intention by the parties that the grounds for termination set forth in Article VII-A were intended to be exclusive and limited to those alone. The defendant on the other hand contends that the decision to discontinue all operations of its business and thereby terminate the employment of its employees is a prerogative of management which was not covered nor intended to be covered in the collective bargaining agreement. In other words that the grounds for termination, explicitly written in the agreement are supplemented by the aforementioned prerogative of management.

Whether a dispute is arbitrable depends upon a fair construction of the terms and scope of the collective bargaining agreement. *Industrial Trades Union of*

America vs. Woonsocket Dyeing Co. 122 F. Supp. 872. An analysis of the pertinent provisions of the agreement indicates clearly that the dispute relates to the "meaning and application" of the agreement and that the contentions of the parties in this respect are not frivolous but are fairly and justly maintained and advanced. It is only by an interpretation of the various provisions of the agreement that the dispute may be resolved. This is exactly the type of disagreement which the parties agreed by Article VIII-B was subject to arbitration. It must, therefore, be held that the dispute is arbitrable under the contract. See: *Textile Workers Union of America, C I O vs. American Thread Company*, 113 F. Supp. 137 (1953); *Wilson Bros. vs. Textile Workers of America, C I O* ___ F. Supp. ___(1954), (27 CCH Labor Cases, CASE No. 69,026, p. 88, 390); *Insurance Agents' Inter. Union vs. Prudential Insurance Co.* 122 F. Supp. 869 (1954); and *Local No. 379, etc. vs. Jacobs Mfg. Co.* 120 F. Supp. 228 (1953). Hence, the refusal of the defendant to submit the termination dispute to arbitration, after written request therefor by the plaintiffs, constitutes a breach by the defendant of the collective bargaining agreement in full force and effect between the parties.

A second point raised by the defendant concerns the power of this Court to enforce an arbitration provision in a collective bargaining agreement. It contends that a federal court does not have any authority to grant specific performance of arbitration contracts under Section 301 of Taft-Hartley Act. This Court, however, has already expressed itself in that regard in a matter involving this same lawsuit. *United Textile Workers of America, A. F. L. Local 1802, et al vs. Goodall-Sanford, Inc.*, 129 F. Supp. 859 (April 1, 1955). In that decision, this Court held that it had jurisdiction to afford equitable relief under Section 301 of the Taft-Hartley Act, relying

upon the authorities of *Milk and Ice Cream Drivers. v. Gillespie Milk Prod. Corp.*, 6th Cir., 203 F. 2nd 650; *Textile Workers Union v. American Thread Co.*, D. C. Mass., 113 F. Supp. 137; *Local 207, Etc. v. Landers, Frary & Clark*, D. C. Conn., 119 F. Supp. 877; *Insurance Agents' Inter. Union v. Prudential Ins. Co.*, D. C. Pa., 122 F. Supp. 869; *The Evening Star Newspaper Co. v. Columbia Typo Union*, D. C. D. Co., 124 F. Supp. 322; *Industrial Trades Union v. Woonsocket Dyeing Co.*, D. C. R. I., 122 F. Supp. 872. On the basis of these cases and particularly *Local 207, Etc. vs. Landers, Frary & Clark*, supra and *Textile Workers Union v. American Thread Co.*, supra, this Court may compel arbitration, as provided by the terms of a voluntary contract. Contra: *Local 205, United Electrical, Radio and Machine Workers of America, v. General Electric Co.*, D. C. Mass., 27 CCH labor cases, CASE No. 69,085, p. 85,567.

The recent Supreme Court decision of *Association of Westinghouse Salaried Employees v. Westinghouse Electric Co.*, 75 Sup. Ct. 488, cited by the defendant in support of its aforementioned contention, is not in point. It held merely that the language of Section 301 is not sufficiently explicit nor its legislative history sufficiently clear to indicate that Congress intended to authorize a union to enforce in a federal court the uniquely personal right of an employee for whom it had bargained, to receive compensation for services rendered his employer. The case does not clarify the scope of power of federal courts in suits under Section 301 of the Taft-Hartley Acts since there was a 3-2-1-2 split in that regard. Furthermore, this Court need not decide whether it has jurisdiction to determine the actual controversy itself because, by deciding that the dispute is arbitrable, that point is not reached. *Wilson Bros. vs. Textile Workers of America C I O*, Supra.

It is, therefore, ORDERED, ADJUDGED and DECREED that the Motion for Summary Judgment with regard to the matter of specific performance of the arbitration clauses of the collective bargaining agreement, be and hereby is, GRANTED.

Counsel for the plaintiffs is directed to prepare a Decree in conformity with the views expressed in this Opinion.

JOHN D. CLIFFORD, JR.,
Judge, United States District Court,
for the District of Maine

Portland, Maine.
June 1, 1955.

DECREE

This cause having come on for hearing on plaintiffs' motion for summary judgment regarding the prayer of the complaint, as amended, seeking specific performance of the arbitration clauses of the collective bargaining agreement in force and effect between the parties and after hearing and argument, the Court having rendered its findings of fact and conclusions of law and having granted the motion of plaintiffs for summary judgment.

IT IS ORDERED, ADJUDGED AND DECREED, AS FOLLOWS:

(1) Within ten (10) days from the date hereof the parties shall undertake, in accordance with the provisions of Article VIII, B, (1) of the collective bargaining contract executed by the parties, to agree upon, and if such agreement has been reached the parties shall designate, a person to serve as a single arbitrator of the dispute here involved. Said designation shall be filed with the Clerk of this Court.

(2) If at the expiration of said ten (10) days, the parties have failed to agree upon and to appoint such

single arbitrator, and to file said appointment with the Clerk of this Court, the Court itself will designate a person to serve as the single arbitrator.

(3) Within ten (10) days after said single arbitrator has been designated by the parties or appointed by the Court, as the case may be, or within such further time as the said arbitrator may himself see fit to allow upon application made to him by any of the parties for an extension of time, the parties shall submit and present to the said arbitrator as the controversy to be heard and decided by him, following such procedures as said arbitrator may direct not inconsistent herewith or with the provisions of Article VIII, B of the collective bargaining agreement in force and effect between the parties, the following matters:

a. Did Goodall-Sanford, Inc. violate the collective bargaining agreement between Goodall-Sanford, Inc., on the one hand, and United Textile Workers of America, A. F. L. Local 1802, and United Textile Workers of America, A. F. L., on the other hand—(as constituted by the agreement executed by the said parties on October 1, 1951 and renewed on July 29, 1953, and as supplemented by the supplemental agreement executed by said parties on June 21, 1954)—when Goodall-Sanford, Inc. purported to terminate the employment, as of January 29, 1955, and as of February 18, 1955, of various of its production and maintenance employees at Sanford and Springvale, Maine, (approximately 1400 in number) on the ground that because of continued heavy losses, Goodall-Sanford, Inc. had decided to terminate all operations of its mills in Sanford and Springvale and had inaugurated a program of liquidation and that owing to the liquidation proceedings in Mills A, B, C, and Printworks, and the subsequent sales of the

mills, the department in which each employee thus purportedly terminated had previously worked had been completely shut down and would not reopen;

b. If a violation of contract was committeed by Goodall-Sanford Inc. what must be done by Goodall-Sanford; Inc. appropriately and fully to remedy the said wrong to the employees affected, in accordance with the terms and provisions of the entire collective bargaining agreement.

(4) The decision rendered by the said single arbitrator shall be final and binding on the parties herein:

Dated at Portland, Maine, this 13th day of June, A. D. 1955.

JOHN D. CLIFFORD, JR.,
Judge, United States District Court for the District of Maine.

NOTICE OF APPEAL.

Notice is hereby given that Goodall-Sanford, Inc., defendant above named, hereby appeals to the United States Court of Appeals for the First Circuit from

(1) The order entered in this action on March 23, 1955, denying defendant's motion to dismiss the amended Complaint for want of jurisdiction;

(2) The order entered in this action on June 1, 1955, denying the defendant's motion to dismiss the amended Complaint as further amended for want of jurisdiction;

(3) The order and opinion of the District Court entered on June 1, 1955, ruling that the District Court had jurisdiction to afford equitable relief under Section 301 of the so-called Taft-Hartley Act, and granting plaintiffs' motion for summary judgment with regard to the matter of specific performance of the arbitration clauses of the collective bargaining agreement, and

(4) The decree entered by the District Court on June 13, 1955, pursuant to the order and opinion entered on June 1, 1955.

By
DRUMMOND AND DRUMMOND,
WILLIAM B. MAHONEY,
Attorneys for Goodall-Sanford, Inc.

June 27, 1955.

MOTION TO SUSPEND OPERATION OF DECREE FOR SPECIFIC PERFORMANCE PENDING APPEAL TO COURT OF APPEALS

The defendant moves that, in accordance with the provisions of Rule 62, Paragraphs c and d of the Federal Rules of Civil Procedure, this Court enter an order suspending the operation of the decree entered in this cause on June 13, 1955, pursuant to an order and opinion entered on June 1, 1955, during the pendency of the appeal filed by the defendant in this cause on June 27, 1955, upon such terms as this Court considers proper for the security of the rights of the plaintiffs.

Dated June 27, 1955.

By
DRUMMOND AND DRUMMOND,
WILLIAM B. MAHONEY,
Attorneys for Goodall-Sanford, Inc.

ORDER

Motion granted. Operation of decree entered on June 13, 1955, pursuant to order and opinion entered on June 1, 1955, suspended pending appeal, without bond.

JOHN D. CLIFFORD, JR.,
Judge United States District Court.

POINTS UPON WHICH THE DEFENDANT INTENDS TO RELY ON THE APPEAL:

1. That Section 301 of the Labor Management Relations Act of 1947 does not grant to the District Courts of the United States any jurisdiction, where no other ground for Federal jurisdiction is alleged or claimed.

2. That in no event does Section 301 of the Labor Management Relations Act of 1947 grant to the District Courts of the United States equitable jurisdiction to grant injunctions or compel specific performance of arbitration clauses in a collective bargaining agreement.

3. That the dispute between the defendant (employer) and the plaintiff (union) parties to the collective bargaining agreement with respect to termination by the employer of employment of its employees in the bargaining unit, then on layoff status and the removal of their names from the payroll records of the employer on the ground that the department in which they worked had been completely shut down and would not reopen, which termination was a part of a program of complete liquidation of all operations of the employer's mills, due to continued heavy losses, is a labor dispute within the meaning of the Norris-LaGuardia Act.

4. That said dispute, being a labor dispute, the District Court is without jurisdiction to decree specific performance of an agreement to arbitrate such a dispute because of the prohibitions of the Norris-LaGuardia Act.

5. That the dispute between the plaintiff (union) and defendant (employer) as to termination of services of the defendant's employees in the bargaining unit, and their removal from the payroll records of the employer, on the ground that the department in which each employee had previously worked had been completely shut down and

would not reopen, which termination was part of a program of complete liquidation of the employer's mills due to continued heavy losses, is not an arbitrable issue under the collective bargaining agreement then in effect between the defendant (employer) and the plaintiff (union) at the time of such termination.

6. Whether the decision of the District Court is controlled by Federal Law or the law of the State of Maine, in which State the collective bargaining agreement between the defendant (employer) and the plaintiff (union) was entered.

7. If decision is controlled by Federal law, whether provisions in the collective bargaining agreement between the plaintiff (union) and the defendant (employer) for final binding arbitration of future disputes relating to the meaning and application of the agreement are valid and enforcible by a decree for specific performance under the Federal law.

8. If decision is controlled by the law of Maine, whether provisions in the collective bargaining agreement between the plaintiff (union) and the defendant (employer) for final binding arbitration of future disputes relating to the meaning and application of the agreement are valid under the law of Maine and enforcible by a decree of specific performance.

GOODALL-SANFORD, INC.

By DRUMMOND AND DRUMMOND,
WILLIAM B. MAHONEY
Its Attorneys.

[fols. 49-50] Argument and submission—November 3, 1956 (omitted in printing).

United States Court of Appeals
For the First Circuit

No. 5029.

GOODALL-SANFORD, INC.,
DEFENDANT, APPELLANT,

v.

UNITED TEXTILE WORKERS OF AMERICA, AFL, LOCAL 1802 ET AL.,
PLAINTIFFS, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE.
[129 F. Supp. 859; 131 F. Supp. 767]

Before MAGRUDER, *Chief Judge*, and WOODBURY and HARTIGAN, *Circuit Judges*.

William B. Mahoney, with whom *Daniel T. Drummond, Jr.*, *Douglas M. Orr*, and *Drummond & Drummond* were on brief, for appellant.

Sidney W. Wernick, with whom *Berman, Berman & Wernick* was on brief, for appellees.

OPINION OF THE COURT.
April 25, 1956.

MAGRUDER, *Chief Judge*. This case is the third one decided today on problems relating to the power of a federal district court to compel arbitration in accordance with a collective bargaining agreement. However, the instant case reached this court in a posture different from that of the other two; and it involves additional considerations not present in *Local 205, United Electrical Workers v. General Electric Co.*, No. 4980,

or *Newspaper Guild v. Boston Herald-Traveler Corp.*, No. 4983.

Plaintiffs herein, a local labor organization and its parent national union, represented employees of defendant Company at plants in Sanford and Springvale, Maine, in an industry affecting commerce. The last collective bargaining agreement between the parties, as renewed in June, 1954, provided that it was to "continue in full force and effect" until July 15, 1955. The past tense is used advisedly, for defendant, because of continued heavy losses, commenced to terminate all operations at its Sanford and Springvale mills and inaugurated a program of liquidation during the second half of 1954. Production was limited to "running out" products in process, at the completion of which the several mills were shut down completely. By April, 1955, all production operations had ended and all of the real estate and buildings had been sold; the corporation was to go out of existence after liquidating completely.

On December 29, 1954, and February 18, 1955, certain groups of employees (totaling approximately 1400) were notified that their respective employment with the Company was being terminated as of those dates and that their names were being removed from the payroll records. Although the workers were already on lay-off status, those actions were significant with respect to various "fringe benefits" provided in the collective bargaining agreement, including group life, medical, and hospitalization insurance, pensions, and vacation pay. The Union protested each of these notifications, achieving a month's delay as to the first group of terminations, and subsequently it requested arbitration of the entire problem in accordance with the contract, which will be described in some detail later in this opinion. The Company declined to

arbitrate, deeming the terminations not an arbitrable matter under the contract. On March 15, 1955, the Union filed its complaint in the present action, invoking § 301 of the Taft-Hartley Act (61 Stat. 156) as the basis for jurisdiction, and praying for an order to compel arbitration and for interlocutory injunctive relief. A restraining order and a preliminary injunction were granted, 129 F. Supp. 859, which forbade the termination, but on May 20, 1955, Judge Clifford dissolved the preliminary injunction. No questions touching upon the granting or dissolving of the injunction are presented on this appeal. In an opinion and order of June 1, 1955, 131 F. Supp. 767, the district court granted the Union's motion for summary judgment on its prayer for specific performance of the arbitration provision, and subsequently entered a decree which will be described later. The Company appeals from that decree.

I.

At the outset we must note a question as to whether the order and decree of the district court are appealable. The decree recites, as did the arbitration provision of the contract, that the decision of the arbitrator "shall be final and binding" on the parties. Thus it seems that the court did not intend to reserve jurisdiction to confirm the arbitrator's decision. Perhaps it could not have done so with respect to this contract calling for a "final and binding" award, since the Arbitration Act, 9 U. S. C. § 9, seems to authorize confirmation of an award by summary proceedings in the district court only when the contract includes an express stipulation for entry of judgment upon the award. See *Hyman v. Pottberg's Executors*, 101 F. 2d 262, 266 (C. A. 2d, 1939); *Lehigh Structural Steel Co. v. Rust Engineering Co.*, 59 F. 2d 1038 (C. A. D. C. 1932); S. Rep. No. 536, 68th Cong., 1st Sess. 1 (1924). It must be recognized,

however, that even without a reservation of jurisdiction to confirm the eventual award, a decree ordering parties to arbitrate obviously does not purport to adjudicate the merits of the controversy or finally terminate it. And where arbitration is sought through the related procedure for stay of a pending action pursuant to § 3 of the Arbitration Act, an appeal prior to the arbitration is only available, under 28 U.S.C. § 1292(1), whether the stay is granted or denied, if the pending action was "legal" rather than "equitable" in character. *Baltimore Contractors, Inc.* v. *Bodinger*, 348 U.S. 176 (1955). The appeal at that stage may be unavailable under the test of the *Baltimore Contractors* case even where a request for an affirmative order compelling the other party to arbitrate was joined with the request for a stay. *Wilson Bros.* v. *Textile Workers Union*, 224 F.2d 176 (C.A. 2d, 1955); *Turkish State Railways Administration* v. *Vulcan Iron Works*, 230 F.2d 108 (C.A. 3d, 1956); cf. *Schoenamsgruber* v. *Hamburg American Line*, 294 U.S. 454 (1935) (§ 8). Chief Judge Clark has suggested that where an order to compel arbitration is granted in an independent proceeding under § 4, the appeal likewise should be denied, not only to make availability of appeal more consistent with the practice under other sections of the Arbitration Act, but also because an appeal prior to the arbitration may be "disruptive and delaying." See *Stathatos* v. *Arnold Bernstein Steamship Corp.*, 202 F.2d 525, 527 (C.A. 2d, 1953). There is much force to this view, although we doubt that a completely consistent pattern of appeal could be achieved in view of the variant situations illustrated by the cases already cited. At any rate, we are more persuaded by some of the older precedents, which viewed a § 4 proceeding as completed upon the granting of the only relief sought, an order of the court compelling arbitration, and thus held that order to be "final" in the sense of 28 U.S.C. § 1291.

Krauss Bros. Lumber Co. v. *Louis Bossert & Sons, Inc.*, 62 F.2d 1004 (C.A. 2d, 1933); *Continental Grain Co.* v. *Faust & Russell, Inc.*, 118 F.2d 967 (C.A. 9th, 1941). This holding, which we adopt here, contributes consistency at least to the extent that appeal is equally available whether the court grants or denies an order to arbitrate, for dismissal of a § 4 petition on the merits is clearly a final judgment.

II.

The district court did not proceed under the Arbitration Act (9 U.S.C. §§ 1 *et seq.*) in this case, but found its authority to compel arbitration in § 301, relying upon some of the decisions discussed in our opinion today in *Local 205* v. *General Electric Co.*, No. 4980. For the reasons stated in the latter opinion, we do not accept this approach. But our holding in the *General Electric* case applies here; if the terms of the Arbitration Act are satisfied, the decision to compel arbitration was within the power of the district court.

It would be merely dilatory at this stage to remand this case for amendment of pleadings to allege compliance and defenses under the Arbitration Act. In the other two cases decided today, wherein the district court had denied an order to arbitrate, remand for a decision on the merits was necessary, and so affording an opportunity to amend was appropriate. Here the district court has ruled on the merits, and we may proceed to review that decision, after determining from the record that the case substantially complies with the requisites of the Arbitration Act.

The arbitration clause at issue comes within the scope of § 2 of that Act. Article VIII of the contract provides that

> "any dispute which relates solely to the meaning and application of this Agreement or any individual grievance

> may be referred to arbitration by written notice by either party to the other. . . . Arbitration shall be in accordance with the following procedure: . . .
>
> 2. The Arbitrator shall have no power to add to or to subtract from the terms of this Agreement. . . ."

The four-step grievance procedure that precedes arbitration in Art. VIII was not carried out here, although conferences somewhat equivalent to step 4 took place. At any rate, the Company may be taken to have waived compliance with that procedure by its failure to allege that ground in resisting arbitration in the court below. The proceedings in that court in substance were equivalent to the procedure of § 4 of the Act. There was no issue over "the making of the agreement for arbitration or the failure to comply therewith," other than the question of arbitrability of the dispute. This the court determined upon motion for summary judgment. Since there was no controverted issue of material fact and the question of arbitrability turned only upon interpretation of the written contract, summary judgment was an appropriate vehicle for the decision, not inconsistent with the provision of § 4 for trial to a jury or the court of controverted issues regarding the making or breach of the agreement to arbitrate. See also part IV of our opinion in the *General Electric* case.

The decree ordered the parties to agree upon a person to serve as arbitrator but provided for selection of an arbitrator by the court if the parties failed to agree upon one within ten days. The order to select an arbitrator was consistent with Art. VIII of the contract, and the power of the court to make the appointment in the event the parties failed to do so is expressly conferred by § 5 of the Arbitration Act. The decree also provided, as already noted, that the award was

to be "final and binding," and it framed the questions to be submitted to arbitration as follows:

> "*a.* Did Goodall-Sanford, Inc. violate the collective bargaining agreement . . . [by taking the action described at the beginning of our opinion] . . . ;
>
> *b.* If a violation of contract was committed by Goodall-Sanford, Inc. what must be done by Goodall-Sanford, Inc. appropriately and fully to remedy the said wrong to the employees affected, in accordance with the terms and provisions of the entire collective bargaining agreement."

This formulation of the issues in dispute is accurate and serves to limit the arbitrator to the matters deemed arbitrable by the court, a limitation of which defendant cannot complain. Defendant has argued here that the second question, taken with the provision for finality, is somehow improper. We do not understand this. Arbitrators conventionally award appropriate relief, upon finding a breach of contract; there would be little point to arbitration otherwise, and the parties must have understood that in placing an arbitration clause in their collective bargaining agreement. The contract itself provides for finality of an award, so that provision of the decree has no particular effect. Of course, despite "finality" an award is subject to some degree of judicial review through 9 U.S.C. §§ 10-11 or other appropriate proceedings. See *Hyman v. Pottberg's Executors*, supra, 101 F.2d at 266.

In summation, we find no jurisdictional or procedural error in the action of the district court, nor any substantial deviation from the procedure that would have been followed under the Arbitration Act. Accordingly, we turn to the merits of the decision below.

III.

The "merits" of a suit to compel arbitration, of course, do not include the ultimate issues of contract interpretation that determine the outcome of the controversy. Those are what the arbitrator will decide. What we must pass on here is only the district court's determination that the controversy is arbitrable. The court held "that the dispute relates to the 'meaning and application' of the agreement and that the contentions of the parties in this respect are not frivolous but are fairly and justly maintained and advanced." 131 F. Supp. at 771. It will be helpful now to set forth the relevant provisions of the contract. The arbitration paragraph itself was quoted in the last part of this opinion and so will not be repeated. It will also be recalled that the collective bargaining agreement had been extended in June, 1954, to "continue in full force and effect" until July 15, 1955.

Article VII, entitled "Termination of Employment," stated as follows:

> "A. Reasons for Termination: An employee's continuous service and his employment with the Company shall be terminated by:
>
> 1. Voluntary Quit.
>
> 2. Discharge for cause.
>
> 3. Absence from work for a period of eighteen (18) months or more for any reasons other than to fill a Union position to which the employee was elected or appointed or where an entire operation has been discontinued."

Eligibility to be paid for the annual summer vacation was given in Art. V in these terms:

"B. Eligibility Requirements: During the term of this agreement an employee on the payroll of the Company on June 1st of the vacation year and who has worked at least 900 hours in the twelve-month period from June 1 of the preceding year to May 31 of the vacation year (both dates included) shall be eligible for vacation with pay. . . ."

Subsequent paragraphs provided for the computation of the amount of "vacation pay" on the basis of the average hourly earnings of employees in the last week or month preceding June 1 in which they worked, and for payment of a "vacation bonus," a percentage of wages for the year ending June 1, to employees who had been "in the continuous employment of the Company" for certain periods but who did not qualify for vacation pay under the foregoing provisions.

It will be seen that eligibility for vacation pay or vacation bonus was tied to existence of the employment status on a given date, June 1, regardless of whether the employee had worked continuously throughout the preceding year or was working on the date in question, with vacation pay as such limited to those who had worked at least 900 hours during the year (approximately 23 weeks on the normal workweek of Art. III). The district court found that eligibility for the other benefits described in the complaint—life, health, and accident insurance and pensions—also was related to the employment status, with partial benefits continuing during a lay-off but not if the employment was terminated. See 129 F. Supp. at 864-65. The preliminary injunction granted by the district court in that opinion seems to have afforded the principal relief pertinent to those benefits; and it appears that the vacation pay-vacation bonus issue is the major, if

not sole matter in the case at this time. The injunction was lifted on May 20, 1955, and counsel informed us at the argument that the Company carried out the termination of the employment of the persons involved before June 3. The Union's contentions are that this action (delayed since February by the injunction) violated the provisions of Art. VII as to how employment may be terminated, and that those provisions are exclusive. The Company argues to the contrary.

In addition, both the Union and the Company may find support in other articles of the contract, such as these:

"ARTICLE I

D. Rights of Management: The management of the Company's business, including . . . the direction of its working force and the right to hire, lay-off and suspend employees is vested exclusively in the Company, subject to the provisions of this agreement."

"ARTICLE XIII

. . . this Contract contains all matters on which the parties are mutually agreed. If at any time while this agreement is in effect the parties desire to modify, amend, or add to it in any respect either retroactively or prospectively they may do so by mutual assent. . . ."

"ARTICLE XVI

The parties acknowledge that during the negotiations which resulted in this agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by [illegible] from the area of collective bargaining, and that the understandings and agreements arrived at by the parties

after the exercise of that right and opportunity are set forth in this agreement. Therefore, the Company and the Union, for the life of this agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to, or covered in this agreement, or with respect to any subject or matter not specifically referred to or covered in this agreement, even though such subjects or matter may not have been within the knowledge or contemplation of either or both parties at the time that they negotiated or signed this agreement."

It is not our function here to determine whether a reconciliation of all these contract provisions will support or refute the Union's contentions. We believe that the provisions set forth at length above do indicate, as the district court held, that the facts of this case involve a "dispute which relates solely to the meaning and application" of the contract, in the words of the arbitration clause, and that the contentions of the party seeking arbitration thereunder are not frivolous or baseless.

However, defendant argues that well-settled law entitles an employer to shut down an unprofitable business and terminate the employment of its employees, so that the termination of employment under those circumstances cannot create an arbitrable issue under a collective bargaining agreement. The point is well stated in defendant's brief in these words:

"A collective bargaining agreement is a living thing to govern the relationship of the parties during the life of the agreement while the business is being operated as

> a going business. It certainly does not bind the employer to carry on an unprofitable business. The decision to completely and finally discontinue an unprofitable business is a function of management and the collective bargaining agreement was not designed to limit that function."

It may be that existence of a collective agreement with a union for a fixed term does not affect the common law status of the individual employments as contracts terminable at will, except in so far as the union contract expressly limits the employer's power to terminate. See *United States Steel Corp.* v. *Nichols*, 229 F.2d 396 (C.A. 6th, 1956); 1 Teller, Labor Disputes and Collective Bargaining § 169 (1940). And it may also be that, as a result, the act of terminating employment because a department or an entire business is closed cannot be prevented, or made the basis for liability to a lawsuit or to arbitration under a "discharge for cause" provision of a union contract. See *Local Union No. 600* v. *Ford Motor Co.*, 113 F. Supp. 834 (E.D.Mich. 1953); *Machine Printers Beneficial Assn.* v. *Merrill Textile Print Works, Inc.*, 12 N.J. Super. 26, 78 A.2d 854 (App.Div. 1951); *Industrial Trades Union* v. *Woonsocket Dyeing Co., Inc.*, 122 F. Supp. 872 (D.R.I. 1954). We do not have to make a decision on either of those propositions, for the situation before us is distinguishable.

It cannot be doubted that a collective bargaining agreement could be drawn to cover the problems arising in the eventuality of an employer's going out of business. For example, see the collective bargaining agreement dealt with in *Bigerly* v. *Duke Power Co.*, 217 F.2d 803 (C.A. 4th, 1954). Even without an express reference to that possibility in the contract, in view of the increasingly complex use of compensation in the

form of "fringe benefits," some types of which inherently are not payable until a time subsequent to the work which earned the benefits, we believe that there may be terms within a union-employer contract whose effect is not necessarily limited to the continuance of the living relationship that exists while the business is being operated as a going concern. See *Matter of Potoker*, 286 App.Div. 733, 146 N.Y.S.2d 616 (1st Dept. 1955). Here the eligibility for vacation pay was stated in Art. V to be dependent on existence of the employment relationship on a given date, prior to the end of the contract term. The parties must have contemplated that on this date particular employees might have been away from work for a considerable time subsequent to completion of the minimum 960 hours of work whereby they had earned the vacation pay. Without deciding whether this contract term does have continued effect in the circumstance of the employer's good faith decision to terminate all operations prior to June 1, 1955, we hold that the question thus posed is an arbitrable one under this contract on the facts of this case. Cf. *Wilson Bros. v. Textile Workers Union*, 132 F. Supp. 163 (S.D.N.Y. 1954), appeal dismissed 224 F.2d 176 (C.A.2d, 1955); *Matter of Potoker*, supra.

The decree of the District Court is affirmed.

[fol. 63] In United States Court of Appeals

Judgment—April 25, 1956

This cause came on to be heard on the record on appeal from the United States District Court for the District of Maine, and was argued by counsel.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The decree of the District Court is affirmed.

By the Court: (S.) Roger A. Stinchfield, Clerk.

Thereafter, on May 9, 1956, mandate was stayed until further order of Court.

[fol. 64] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 65] Supreme Court of the United States, October Term, 1956

No. 262

Goodall-Sanford, Inc., Petitioner,

vs.

United Textile Workers of America, A. F. L. Local 1802, et. al.

Order Allowing Certiorari—Filed October 8, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the First Circuit is granted limited to questions 1, 2, 3, 4 and 7 as set out in the petition for writ of certiorari and to the question raised by the respondent; namely, the appealability of an order granting specific performance of an arbitration convenant which read as follows:

"1. Whether Section 301 of the Labor Management Relations Act of 1947 granted to the District Courts of the

United States jurisdiction where no other ground for Federal jurisdiction is alleged or claimed.

2. Whether Section 301 of the Labor Management Relations Act of 1947 granted to the District Courts of the United States equitable jurisdiction to grant injunctions or compel specific performance of arbitration clauses in a collective bargaining agreement.

3. Whether the District Court has jurisdiction to decree specific performance of an agreement to arbitrate such a dispute, despite the prohibitions of the Norris-LaGuardia Act.

4. Whether the United States Arbitration Act, 9 U. S. C. Sec. 1 et seq. is applicable to an agreement to arbitrate in a collective bargaining agreement.

7. Whether a union may prosecute, by way of arbitration procedure in a collective bargaining agreement, the peculiarly personal rights of individual employees to recover vacation pay, and judicially compel arbitration for that purpose."

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Black took no part in the consideration or decision of this application.

(2984-3)